

## The constitutional obligation to protect the right to education in Nigeria: A call for action

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**Summary:** *This article argues that beyond the obligation of states to respect, promote and fulfil the right to education, the obligation to protect, which is crucial, is often neglected. Additionally, it highlights that access to and availability of education is limited when states do not protect the school space by making it safe for learners. With a focus on Nigeria, the article argues that the lack of fulfilment of the obligation to protect by the Nigerian state is a violation of its obligations under international human rights law. Relying on Nigeria's commitments under various African human rights treaties, national law and policies, the article makes recommendations on how the obligation to protect can be realised and, thus, the right to education respected in its entirety in Nigeria.*

**Key words:** *right to education; obligation to protect; safety; international human rights law; Nigeria*

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# 1 Introduction

Regardless of gender, race, ethnicity, country of birth, colour, religion, or any other status, everyone has the same fundamental human rights. The foundation of world freedom, justice and peace is human rights. These rights are expressly acknowledged by the 1948 Universal Declaration of Human Rights (Universal Declaration) and several other treaties, including, at the global level, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and, at the regional level in Africa, the African Charter on Human and Peoples' Rights (African Charter).

International human rights law outlines states' obligations to respect, protect, promote and fulfil human rights. The term 'human rights' as used in this sense includes the broad category of civil and political rights, as well as economic and social rights. These conditions impose specific obligations on governments, regardless of their political, economic or cultural systems. The core principles that characterise all human rights are universality, indivisibility and interdependency.<sup>1</sup> This implies that rights are interwoven and interlinked. For the purposes of this article, it is our argument that the right to education is intrinsically linked to other rights such as the right to life. This position is adopted on the premise that the fundamental and all-encompassing principles of equality and non-discrimination serve as the foundation for international human rights law.

According to the Universal Declaration, everyone has a right to an education.<sup>2</sup> The full development and dignity of every individual, the capacity to make a significant contribution to society, and the promotion of respect for human rights are all objectives of education. Education is crucial in and of itself but is usually referred to as a 'multiplier' human right since the degree of access to it influences the degree to which other rights are enjoyed.<sup>3</sup> Education provides the premise on which other rights, such as the right to life, health and freedom of expression, can be enjoyed.

Articles 13 and 14 of ICESCR guarantee the right to education. Article 13(1) ensures that everyone's right to an education is respected. According to article 13(2)(b), secondary education must be generally

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1 UN General Assembly Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23 para 5, <https://www.refworld.org/docid/3ae6b39e.html> (accessed 30 August 2023).

2 Art 26 Universal Declaration.

3 AC Onuora-Oguno *Development and the right to education in Africa* (2019) 123.

accessible to all people, while article 13(2)(c) requires that higher education should be open to all people, based on capacity. Article 14 requires state parties to ensure that free and mandatory education is implemented within their jurisdiction. Article 14 specifically places an obligation on each state party, within two years of becoming a party to ICESCR, to 'work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principles of compulsory education free of charge for all'. This latitude is provided on the premise that, among other relevant conditions or circumstances, such a state party may not be able to secure its metropolitan territory or other territories under its jurisdiction at the time of becoming a party to the Covenant.

Other fundamental provisions that enshrine the right to education in Africa include the 1981 African Charter,<sup>4</sup> the 1990 African Charter on the Rights and Welfare of the Child (African Children's Charter),<sup>5</sup> and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol).<sup>6</sup>

A collective reading of the above provisions spotlights the importance of education as a fundamental right and an obligation that states must pursue to ensure that every individual is properly placed in society to impact positively.<sup>7</sup> This article reviews the obligation to protect in the context of safety of schools. It argues that overall security of both students and teachers is the responsibility of the government of each country. We examine the situation in Nigeria and argue that the failure to meet the obligation to protect in the context of the right to education is a breach of the principles of international law.<sup>8</sup>

The article deals with the questions raised in seven parts, starting with the impact of insecurity on education in Nigeria in the context of sub-Saharan Africa. The content of the right to education and the

4 Art 17(1) African Charter.

5 Art 11 African Children's Charter.

6 Art 12 African Women's Protocol.

7 See, generally; KD Beiter *The protection of the right to education by international law* (2006); M Addaney & AC Onuora-Oguno 'Education as a contrivance to ending child marriage in Africa: Perspective from Nigeria and Uganda' (2017) 9 *Amsterdam Law Forum* 110.

8 It is noted that paras 46 and 47 of the UN Committee on Economic, Social and Cultural Rights (ESCR Committee) General Comment 13: The Right to Education (Art 13 of the Covenant), 8 December 1999, E/C.12/1999/10, makes specific provision of the obligation of the government to protect the right to education. Under para 47 it goes further to state that the obligation includes the duty of the government to prevent third parties from any form of interference in the enjoyment of the right to education, which in this case includes ensuring the safety of schools.

obligations of states to protect the right to education are explored, including by focusing on the obligation to protect and the Safe School Initiative in Nigeria. The justiciability of the right to education is discussed to demonstrate the duty of the government of a country, and Nigeria in particular, to protect and ensure that the safety of children in the educational system is paramount. The article ends with conclusions and recommendations.

## 2 Impact of insecurity on education in Nigeria in the context of sub-Saharan Africa

Nigeria holds a vital role in the context of sub-Saharan Africa. Economically and population-wise, it is a strong state and to a great extent reflects the situation of economic and social status of the majority of the population. This is reflected also in security, governance and education.

Section 18 of the Constitution of the Federal Republic of Nigeria places the responsibility to provide education for everyone on the government. The responsibility includes the provision of 'equal and adequate' opportunity to access education. Despite this constitutional obligation, United Nations Children's Fund (UNICEF) statistics reveal that the number of out-of-school children in Nigeria continues to surge, with the North-East and West the most disadvantaged.<sup>9</sup> The data from UNICEF shows that close to 10,5 million children in Nigeria remain out of school, and one of the major factors that are responsible is the safety of the school space, especially in the north. According to Statistics, the country is in a deficit of close to 50 000 classrooms to meet the required number of classrooms for effective learning.<sup>10</sup>

As at 2019, over one-fifth of African children between the ages of six and 11 years and approximately 60 per cent of teenagers between the ages of 15 and 17 years do not attend school, according to the United Nations Education, Scientific and Cultural Organisation (UNESCO).<sup>11</sup> In comparison to only 6 million boys, 9 million girls between the ages of six and 11 years across the continent will never attend school, raising serious concerns about their education. Girls

9 U Chioma 'UNICEF: Nigeria has world's largest number of out-of-school children' (2024), <https://thenigerialawyer.com/unicef-nigeria-has-worlds-largest-number-of-out-of-school-children/> (accessed 12 May 2024).

10 <https://www.statista.com/topics/6658/education-in-nigeria/> (accessed 8 April 2024).

11 Fact Sheet 56 September 2019 UIS/2019/ED/FS/56.

had a 36 per cent exclusion rate by the time they reached puberty, compared to 32 per cent in the case of boys.<sup>12</sup>

Sub-Saharan Africa has the highest rate of illiteracy in the world. According to statistics,<sup>13</sup> more than 70 per cent of the poorest children in Mali, Niger, Nigeria and Guinea do not attend school. In East and West Africa, extreme poverty has a negative impact on a variety of aspects of daily living, including health, malnutrition, access to clean energy and water, low levels of education, and other associated problems. Only about half of the 128 million children of school-going age in sub-Saharan Africa that are now enrolled in courses, according to the Africa Learning Barometer,<sup>14</sup> are expected to acquire the core knowledge and skills necessary for them to live healthy and successful lives. Research by the Africa Learning Barometer also reveals that poor female students currently enrolled in school in a distant or remote location are far more likely not to be learning important skills, such as reading, writing and mathematics.<sup>15</sup>

Several factors combine to limit the state of access to education in sub-Saharan Africa. Even though every child has the right to education, millions of children today – including those from the most underprivileged families and communities – are denied this right. Some barriers to schooling are visible, such as extreme poverty or illiteracy. Due to concerns about security, and poor educational policies in countries, millions of children are unable to attend school. According to Onuora-Oguno and Mustapha, the violence against Western education in Nigeria as perpetrated by Boko Haram is a huge factor impeding the realisation of the right to access education.<sup>16</sup> Noting that several factors impact on access to education, we focus on insecurity.

The education sphere and its environment must be treated as sanctuaries.<sup>17</sup> According to data from the Global Coalition to Protect

12 I Kaledzi 'Why education remains a challenge in Africa', <https://www.dw.com/en/africa-right-to-education-remains-a-challenge/a-60518000> (accessed 10 June 2024).

13 L Kramer 'Poor children not attending school in Africa 2020 by country' 1 February 2022.

14 J van Fleet, K Watkins & L Greubel *Africa learning barometer* (2012).

15 Van Fleet and others (n 14) 3.

16 AC Onuora-Oguno & MA Abdulaheem-Mustapha 'Beyond the law to socio-legal intervention: The Boko Haram insurgency and the Nigerian child' (2018) *Boko Haram and International Law* 371.

17 FV Leeuwen 'Schools shall be safe sanctuaries' (2009) A Guide to the Declaration by Education International 2, [https://download.ei-ie.org/Docs/WebDepot/2009\\_booklet\\_Schools-As-Safe-Sanctuaries\\_en.pdf](https://download.ei-ie.org/Docs/WebDepot/2009_booklet_Schools-As-Safe-Sanctuaries_en.pdf) (accessed 27 May 2024).

Education from Attack (GCPEA),<sup>18</sup> the number of attacks on schools in the six conflict-affected countries in Africa (Burkina Faso, Cameroon, Central African Republic, Mali, Niger and Nigeria) increased from 303 to 802 during 2019 and 2020.<sup>19</sup>

Two million children in Western and Central Africa are unable to attend school because of the increased insecurity in and around schools.<sup>20</sup> Schools are regularly the direct targets of attacks; data shows that more than a quarter of all confirmed attacks on schools globally occurred in this area.<sup>21</sup> According to an analysis by the Armed Conflict Location and Event Data Project (ACLED),<sup>22</sup> at least 2 880 violent incidents, including fighting, explosions and brutality against civilians, have taken place in and around educational institutions.

Over the years there have been increasing attacks on educational facilities. In 2010 there were 39 reported incidences of attack, in 2020 there were 559 reported incidences, and 440 in the first half of 2021.<sup>23</sup> An emerging dimension of these attacks is the escalation of kidnapping of school pupils. More than 1 037 locals – mostly teachers and students – were kidnapped at or close to educational facilities during the first seven months of 2021. This includes a situation where up to 300 children were kidnapped in one incident.<sup>24</sup> Attacks on educational facilities result in fatalities, injuries and the destruction of educational infrastructures. As a result of these attacks and the resulting terror, numerous schools have been closed across the region, school attendance has been disrupted, and enrolment has decreased. By the deployment of improvised explosive devices (IEDs), air strikes, ground strikes, raids and looting, attacks on schools might entail the intentional or unexpected use of force against school buildings by the military, the police, other state security services, and non-state armed groups (NSAGs).<sup>25</sup> Teachers are killed, students are abducted, and local buildings are burnt down or plundered.

18 Global Coalition to Protect Education from Attack, [https:// protectingeducation.org/](https://protectingeducation.org/) (accessed 8 April 2024).

19 As above.

20 UNICEF 'Education under threat in West and Central Africa' August (2019), <https://www.unicef.org/child-alert/education-threat-west-central-africa> (accessed 30 August 2023).

21 S Cherkaoui 'Education under attack in West and Central Africa' Note by the Regional Education in Emergencies Working Group October (2021).

22 <https://acleddata.com/#/dashboard> (accessed 30 August 2023).

23 ME de Simone and others 'How can we protect education from attack? A focus on Western and Central Africa' World Bank Blogs September (2021), <https://blogs.worldbank.org/education/how-can-we-protect-education-attack-focus-western-and-central-africa> (accessed 30 August 2023).

24 As above.

25 As above.

Almost 5 000 schools were closed at the beginning of 2021 in Western Africa, depriving hundreds of thousands of children of access to education.<sup>26</sup> Six hundred schools were reportedly closed in Nigeria.<sup>27</sup> The kidnapping wave has a substantial impact on enrolment to and attendance of schools. The incidences of attacks on educational facilities and kidnapping imperil the accomplishments during the prior years where the number of out-of-school children reduced from 10,1 million to 6,9 million in 2020.<sup>28</sup> In 2024 alone, over 500 cases of school kidnapping and abduction have taken place in various schools in Nigeria, with the federal government of Nigeria stating that over 14 schools are at risk of attacks in the country.<sup>29</sup> The largest of these is the abduction of approximately 287 school pupils from Kaduna state.<sup>30</sup>

The above scenarios limit access to education and constitute a violation of the right of individuals to access education. It further reinforces the need to amplify the government's obligation to protect, in respect of which it is falling short in this situation. This situation reinforces the views of Tomasveski<sup>31</sup> and Onuora-Oguno<sup>32</sup> on the need to protect the right to education as enshrined in international law.

Having noted the obstacles that impede the realisation of access to education, it is imperative to conduct a cursory examination of the content of education and what the right to education entails.

26 Sahel Crisis: Humanitarian needs and requirements overview – Burkina Faso *Relief Web* 26 April 2021, <https://reliefweb.int/report/burkina-faso/sahel-crisis-humanitarian-needs-and-requirements-overview-april-2021> (accessed 30 August 2023).

27 T Obiezu 'Hundreds of schools are shut down in Nigeria due to insecurity' VOA 21 September 2022, <https://www.voanews.com/a/hundreds-of-schools-are-shut-down-in-nigeria-due-to-insecurity-/6756329.html> (accessed 30 August 2023).

28 E Okogba 'Nigeria's more than 10m out-of-school children' *Vanguard News*, <https://www.vanguardngr.com/2023/01/nigerias-more-than-10m-out-of-school-children/#:~:text=MORE%20than%2010%20million%20Nigerian,or%20torn%20polythene%20school%20bags> (accessed 31 January 2024).

29 <https://punchng.com/schools-in-14-states-fct-risk-attacks-says-fg/> (accessed 20 August 2023).

30 <https://www.channelstv.com/2024/03/08/287-students-were-abducted-from-kaduna-schools-says-teacher/> (accessed 20 April 2024).

31 K Tomaševski *Removing obstacles in the way of the right to education* (2001) 44. The emphasis is placed on ensuring that all obstacles, such as fees in education, are eliminated as well as ensuring that access to education is unfettered by any social factors such as violence, discrimination and poor infrastructure.

32 See, generally, AC Onuora-Oguno *Development and the right to education in Africa* (2018). Legislative, judicial and social efforts towards protecting the right to education is emphasised, exploring the role of the courts, lawyers and other stakeholder in realising the right to education.

### 3 Content of the right to education

Generally, the content of education must ensure that the general development of an individual is enhanced. To achieve this, education has to be available and accessible, as discussed in the previous part of the article. Thus, for education to be properly implemented, it must meet some laid-down minimum thresholds. General Comment 13 sets out this requirement and is discussed next. General Comment 13, as adopted by the Committee on Economic, Social and Cultural Rights of the United Nations (UN) (ESCR Committee),<sup>33</sup> states the characteristics and features of the right to education, which are availability, accessibility, acceptability and adaptability (often referred to as 'the 4As') that apply to education in all its forms and at all levels.

The first salient element of the right is availability.<sup>34</sup> The government should provide sufficient educational infrastructure (institutions and activities) to accommodate everyone. These should have all the facilities and equipment needed to function efficiently in the environment, such as buildings, teaching aids, qualified staff members who are paid fairly, protection from the elements, gender-neutral rest rooms, and clean water.

The second feature of the right to education is accessibility.<sup>35</sup> The three basic elements of access to education are non-discrimination, physical accessibility and financial accessibility. Nobody should be the target of discrimination based on factors such as sex, race, locality, economic status, disability, citizenship or residence status, membership of a minority group, religion, detention, or sexual orientation, among others. Everybody should have access to educational facilities, especially the most vulnerable. In remote areas or at a safe, reasonable distance from populated areas, schools should be accessible via modern technologies. States should gradually introduce free education at all levels, and all students should have access to affordable education.

Acceptability is the third characteristic under discussion.<sup>36</sup> Subject to the overarching objectives of education and the minimal educational standards mandated by the state, curricula and teaching methods should be accepted by students and, in the right situations,

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33 Adopted 8 December 1999, <https://www.refworld.org/legal/general/cescr/1999/en/37937> (accessed 3 June 2024).

34 General Comment 13 (n 8) para 6(a).

35 General Comment 13 (n 8) para 6(b).

36 General Comment 13 (n 8) para 6(c).

by parents. This means that training should be of a high standard and suitable to the child's needs, circumstances and cultural background.

The last feature of the right to education is adaptability:<sup>37</sup> The demands of pupils in various social and cultural contexts should be met, and education should be sufficiently adaptable to do so.

It is evident that each state has an obligation to protect the right to education in all these dimensions. Thus, in the next part of the article a detailed examination of the obligation is provided.

#### 4 Obligations of states to protect the right to education

Relying on the concept of the 4As, it is instructive to note that instead of merely discussing education, it is imperative to centre the discourse by adopting a human rights perspective. This approach provides a context within which one can situate the obligation of states in promoting the fulfilment and protection of the right to education.

The human rights approach resonates with Tomasevki's position that governmental misuse of power is constrained by human rights.<sup>38</sup> Tomasevki underlines the need to acknowledge 'government in its double role, as a protector and violator of human rights'.<sup>39</sup> According to Tomasevski, 'international human rights law as a conceptual framework'<sup>40</sup> places a high priority on the rule of law when it comes to holding governments accountable for their commitments, both individually and collectively, and views the rule of law as essential. The failure to realise obligations must lead to accountability and must be remedied by ensuring that such violations never reoccur.<sup>41</sup>

It is advanced that a combination of the Tomasevski theory of the 4As and the obligation that is placed on the government to not only promote and fulfil fundamental rights, but the obligation also to protect, is equally important. Consequently, the incessant attacks in the school sphere in Nigeria against pupils and teachers should ordinarily be matters that are adjudicated before the courts and the state be found liable as the circumstances and facts dictate. This will

37 General Comment 13 (n 8) para 6(d).

38 K Tomasevski *Education denied: Costs and remedies* (2003) 205.

39 K Tomasevski *Human rights obligations in education: The 4-A scheme* (2006) 148.

40 Tomasevski (n 38) 2.

41 Tomasevski (n 38) 1.

consequently ensure the respect of the legal dictum of *ubi jus ibi remedium* (where there is a right, there is a remedy).

## 5 Obligation to protect and the Safe School Initiative in Nigeria

In response to the challenges of security and safety in schools, the Nigerian government established the National Safe School Response Coordination Centre (NSSRCC), which is housed in the office of the Nigeria Security and Civil Defence Corps (NSCDC).<sup>42</sup> The Safe School Initiative Declaration of 2015, which was championed by Norway and Argentina, with 119 states already part of the initiative,<sup>43</sup> represents a commitment of states to partner with other institution to make the education sphere safe and conducive to learning.<sup>44</sup>

To determine the performance of the Safe School Initiative, a three-pronged benchmark must be used, comprising safe learning facilities, school disaster management and risk reduction and resilience education.

The importance of Safe School is further advanced by Ikekoronye and Opara where they state the following:<sup>45</sup>

It is, therefore, necessary to stress that in order for children to have full access to basic education and for the optimum realisation of the objectives of basic education to be achieved, both students and teachers should perceive the school environment as being totally safe and secure for teaching and learning to take place.

An appraisal of recent statistics discussed in previous parts of the article reveals that the performance level remains abysmal, as evidenced in the most recent Kaduna attacks and other attacks at the University of Calabar and Confluence University of Science and Technology Kogi State on 10 May 2024.<sup>46</sup> An appraisal of the community intervention and special measures in the declaration and aspiration in Nigeria equally shows a deficit in policy implementation, leaving

42 <https://nssrcc.gov.ng/> (accessed 8 April 2024).

43 Safe Schools Declaration, <https://ssd.protectingeducation.org/#:~:text=UNICEF%2FTremeau%2C%202018-The%20Safe%20Schools%20Declaration,protecting%20education%20in%20armed%20conflict>. (accessed 29 May 2024).

44 For a brief history of the initiative, see generally E Minor 'The safe schools declaration: Reflections on effective post-agreement work', <https://article36.org/wp-content/uploads/2021/07/2021-Safe-Schools-Declaration-reflections-elizabethminor.pdf> (accessed 8 April 2024).

45 EO Ikekoronye & JC Opara 'Safe School Initiative: A necessary tool for promoting safe and secure children's access to basic education in Nigeria in the 21st century' (2021) 2 *Benue State University Journal of Educational Management* 1.

46 BBC report 'Kidnap of students for Kogi University – How e happun', <https://www.bbc.com/pidgin/articles/cxwv70781dyo> (accessed 12 May 2024).

much to be desired.<sup>47</sup> Gever identifies poverty and corruption as key elements that impede the successful implementation of safe schools in Nigeria.<sup>48</sup>

While the efforts to ensure that the schools are safe in Nigeria are appreciated, it is the opinion of the authors that the law must be engaged more proactively in terms of holding the state accountable when they fail to meet the minimum core requirements of safety that is demanded of them. This includes ensuring proper risk management and data intelligence.<sup>49</sup> Additionally, the adequate utilisation of knowledge and risk management is another component that needs to be effectively deployed in Nigeria.<sup>50</sup>

The role of the courts in thus holding the state accountable is advanced in light of the fact that the law and courts are pivotal in holding both states and individuals responsible when they fail, either by omission or commission, to carry out tasks expected of them.<sup>51</sup> An important means of ensuring that states meet their obligations under international human rights law is by ensuring that the right to education is justiciable and that the courts play its part in this regard. This topic is examined in the next part of the article.

## 6 Justiciability of the right to education

'Justiciability' is an essential requirement for each case that is brought before a court of law for the resolution of a dispute of any kind.<sup>52</sup> It also refers to the subjects that may be decided upon by a judicial or quasi-judicial body.<sup>53</sup> Section 6(6)(c) of the 1999 Constitution of Nigeria states clearly that no court has the authority to rule on whether any organ of the government has acted or is acting in

47 [https://mptf.undp.org/sites/default/files/documents/20000/mptfo\\_safe\\_schools\\_initiative\\_mdtf\\_concept\\_note\\_final\\_2\\_september\\_201.pdf](https://mptf.undp.org/sites/default/files/documents/20000/mptfo_safe_schools_initiative_mdtf_concept_note_final_2_september_201.pdf) (accessed 8 April 2024).

48 CV Geve 'Questioning the Safe School Initiative and making a case for a safe Nigeria model' (2016) 1 *Sokoto Journal of the Social Sciences* 2.

49 R Paci-Green & V Adriana 'Comprehensive school safety policy: A global baseline survey' (2020) 44 *International Journal of Disaster Risk Reduction* 1.

50 P Bastidas 'School safety baseline study' UNISDR: Thematic Platform on Knowledge and Education (TPKE) (2011) 8, [https://www.preventionweb.net/files/23587\\_doc18766contenido.pdf](https://www.preventionweb.net/files/23587_doc18766contenido.pdf) (accessed 13 May 2024).

51 AC Onuora-Oguno & BO Onuora-Oguno 'The law as a tool to guarantee the inclusive education of the Nigerian child' (2018) 32 *Educator Multidisciplinary Journal* 32.

52 <https://www.law.cornell.edu/wex/justiciable#:~:text=Justiciable%20refers%20to%20a%20matter,the%20court%20must%20dismiss%20it> (accessed 20 August 2023).

53 <https://www.right-to-education.org/issue-page/justiciability> (accessed 20 August 2023).

accordance with the fundamental objectives and directive principles of state policy.

The ability to seek justice through an impartial court or tribunal may be described as justiciable when a right has been infringed or is likely to be violated. It implies that one can attain justice and accountability. The rights holders possess a legal basis to file a law suit to defend their rights when the duty bearer disobeys their obligations.<sup>54</sup> The notion of a legal remedy should be seen as encompassing both the process of offering the victim adequate redress as well as the supply of a procedural remedy when a right has been infringed or is about to be violated.

National constitutions, bills of rights and various other national laws have enshrined the right to fundamental education. Substantial provisions on the right to education are included throughout Nigeria's laws, legislation, related policies and white papers. These include the 1999 Constitution of the Federal Republic of Nigeria, the 2003 Child Rights Act, and its responsibilities under international law. Importantly, the Universal Basic Education Act of 2004 (UBE Act) places obvious demands on the government towards ensuring free and compulsory basic education. Part of the goals of the Act is ensuring that the education cycle is completed, implying that the state must do all in its power to guarantee safe schools and the security of all persons within the education sphere. As stated previously in this article, the 'right' to education is established in section 18 of Nigeria's 1999 Constitution. The provision mandates the government to concentrate its efforts on ensuring that there are enough opportunities for education at all levels. The provision also requires the government to take steps to lower illiteracy rates and provide free, universal and elementary education wherever feasible. The UBE Act has proved a strong basis for the adjudication and protection of the rights enshrined in the Act. Notably, in *Legal Defence and Assistance Project (LEDAP) GTE & LTD v Federal Ministry of Education & Another* (Ruling), a Nigerian Federal High Court sitting in Abuja relied on the Act to reach a decision that the provisions of section 2(1) of the Act must be read in conjunction with section 18(3) to ensure the realisation of the right to education.<sup>55</sup>

Additionally, section 20 of the Child Rights Act mandates that guardians, institutions, parents and authorities responsible for a child's care, upkeep, development, learning, schooling, socialisation,

54 <https://constitutionallawreporter.com/article-03-section-02/justiciability/> (accessed 20 August 2023).

55 (FHC/ABJ/CS/978/15) [2017] NGFCHC 1.

employment and rehabilitation provide the guidance, discipline, education and training required to ensure the child's assimilation and observance of the obligations to promote the welfare of the child.

Socio-economic rights, such as the right to free public education, have always been considered non-justiciable in Nigeria.<sup>56</sup> This perspective was influenced by the constitutional limitations placed on the exercise of these rights. Unfortunately, the Supreme Court decided in favour of this position in the case of *Archbishop Olubunmi Okogie & Others v Attorney General of Lagos State*,<sup>57</sup> where it was questioned whether a circular issued by the Lagos state government regarding private schools violated section 13 of the 1979 Constitution. The Court in that case posited that despite section 13 of the Constitution requiring the judiciary to conform to and apply the provisions of chapter 2, the case was not justiciable.

Similarly, Abba-Aji JCA in the Court of Appeal sitting in Benin reached the conclusion in *Ogboru v President, Court of Appeal*<sup>58</sup> that when a right does not fall under any of the provisions of chapter IV, no declaration, other determination or judgment can be made in the name of basic rights. No matter how severely a right is infringed, if it is not expressly listed in chapter IV, which contains the fundamental human rights provisions, the court cannot raise it to the level of a fundamental right. It is reiterated that the non-justiciable argument regarding the provisions of chapter II of the Nigerian Constitution (which provides the fundamental objective of state obligations) has developed significantly with recent jurisprudential positions of scholars.<sup>59</sup>

It is noted that the obligation to protect placed on states includes ensuring that the decline of safety, economy and social conditions is not allowed to impede the educational experience of anyone. Article 19 of the UN Convention on the Rights of the Child (CRC)

56 I Ogunniran 'Enforceability of socio-economic rights: Seeing Nigeria through the eyes of other jurisdictions' (2020), <http://www.ajolinfo/index.php/naujilj/article/view/138181> (accessed 21 August 2023). For further insight into this debate, see I Stanley 'Beyond justiciability: Realising the promise of socio-economic rights in Nigeria (2007)' 7 *African Human Rights Law Journal* 225; WO Egbewole & TN Alatise 'Realizing socio-economic rights in Nigeria and the justiciability question: Lessons from South Africa and India' (2017) 34 *International Journal of Politics and Good Governance* 1; AC Onuora-Oguno 'Commentary on the right to education: An expository of article 12 of the Maputo Protocol' (2023) 43 *Public Governance, Administration and Finances Law Review* 8.

57 6 (1981) 1 *NCLR* 218 350.

58 (2005) *JELR* 45299 (CA).

59 See generally AC Onuora-Oguno (ed) *Promoting efficiency in jurisprudence and constitutional development in Africa* (2022).

identifies the right to education to improve children's prospects of a higher standard of living and helps to avoid situations that would be detrimental to both individuals and society. This position is reiterated in the case of *Dilcia Yean and Violeta Bosico v Dominican Republic*,<sup>60</sup> where it was found by the Inter-American Court of Human Rights that the government had discriminatorily infringed the petitioners' right to education by depriving them of their legal identities under domestic law. The state was consequently called upon to ensure that it takes all necessary measures to protect the right to education. The Court held that the state had to 'guarantee access to free elementary education for all children regardless of their background or origin'.<sup>61</sup>

These cases illustrate that the duty of the government of a country to protect and ensure the safety of children in the educational system is paramount. General Comment 13 emphasises the importance of the fact that governments should ensure the protection of the right to education. Governmental entities are claimed to have 'an urgent responsibility' to remove barriers to universal education.<sup>62</sup> If a state cannot provide free and compulsory education, it should be prepared to do so and seek assistance from the international community.<sup>63</sup> States have a responsibility to offer every person a first-class education that follows international best practices.<sup>64</sup> In the case of the security of schools and students, it is incumbent on the government to ensure that no third parties are allowed to interfere with the right to education of students.

States have a duty to guarantee that instruction takes place in a friendly, secure and engaging setting. Tolerance, peace and gender equality among all peoples, ethnic, national and religious groups, as well as those of indigenous heritage, must therefore be reflected in the school environment.<sup>65</sup> States must emphasise the quality of the learning environment, which includes instruction and academic resources, to guarantee the right to education of a high quality.<sup>66</sup>

60 *Yean and Bosico Children v The Dominican Republic* Inter-American Court of Human Rights (IACrHR), <https://www.refworld.org/cases,IACRTHR,44e497d94.html> (accessed 22 August 2023).

61 *Yean* (n 60) para 2.

62 Art 14 ICESCR.

63 See, eg, art 4 of CRC which provides that 'States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, *within the framework of international co-operation*' (our emphasis).

64 Art 26 Universal Declaration.

65 CRC General Comment 1: Aims of Education para 19.

66 As above.

## 7 Conclusions and recommendations

Under international human rights law, states carry the primary obligation for ensuring that the right to education is directly provided for and protected. When they formally accept to be bound by international human rights treaties, governments commit to enacting domestic laws and policies that are consistent with their duties and obligations under these treaties. Similar to civil and political rights, socio-economic and cultural rights impose three separate types of obligations on states: the duty to respect, protect and fulfil. These rights are breached when *any one of these three duties* is not fulfilled. States have a commitment to respect and not to impede people's ability to exercise their economic, social and cultural rights. This article comes to the following conclusions:

First, states have an obligation to respect the right to education by abstaining from actions that obstruct or restrict the exercise of this right. States are required under the obligation to respect to abstain from impeding the exercise of the right to education. States, for example, are barred from enacting laws that discriminate against people or groups in the sphere of education.

Second, states have a commitment to safeguard citizens, which means that they must take action to prevent outsiders from interfering with the exercise of their right to education. The state's duty to protect entails preventing third parties – such as other people, organisations, private schools and other educational institutions, private businesses, donors, and other non-state actors – from interfering with the enjoyment of the right to an education.

Third, states have an obligation to fulfil their citizens' rights to education by implementing proactive measures that support and facilitate the rights of people and communities to an education. To accomplish its commitment, the state must implement the necessary legislative, executive, judicial, financial and other measures to ensure that every student's right to an education is fully realised.

Fourth, the article further concludes that to the extent to which the government has an incumbent duty to protect the right to education as a justiciable right, the government of Nigeria is in violation of its international obligations by its failure to address the state of insecurity in Nigeria that has primarily targeted and hampered the implementation and progression of education rights in the territory.

Based on the above conclusion and observations, especially the developments relating to the government's responsibility to protect,

fulfil and promote the right to education and ensure the safety in schools, the following measures are recommended:

- Policies designed by the government for internally-displaced persons (IDPs) must incorporate principles for the protection of the right to education. This manifests as ensuring that IDP camps are constructed in secure locations with temporary educational facilities made available.
- States must create secure school zones, covering the school buildings (especially at schools with boarding facilities that are particularly vulnerable to attacks by armed Islamist groups) and ensure that the distances covered by students from their homes to schools are characterised by heavy security measures taken by military and non-military forces.
- States must act swiftly and decisively when students are attacked or abducted at school. The Nigerian government's response to school attacks has traditionally been sluggish. Where the right to education is violated by insurgent groups, we recommend that upon apprehension, full implementation of child protection laws be implemented. This includes full-scale prosecution of crimes that hamper the realisation of the right to education.
- Positive action must be taken to facilitate the enjoyment of the right to education. The state should explore collaboration with civil society organisations (CSOs) to provide psychological support to children who are victims of conflict, in addition to the provision of education. It should also cooperate with local communities in recovery to ensure that girls and other vulnerable persons are not excluded from back-to-school programmes.
- States must allocate funding for rebuilding damaged infrastructure, including schools, in post-conflict communities in accordance with international standards.